FOCUS ON PRACTICE:
LIABILITY FOR PATIENT RELEASE
BY FRANK T. FLANNERY, M.D., J.D., LTC, M.C., USA

The law imposes a duty on physicians to exercise reasonable judgment in the discharge of patients from the hospital. Whether in the realm of medicine or other areas, the law recognizes that one who provides assistance to another cannot simply abandon that individual. For example, under certain circumstances, common carriers must consider the effect of release upon the individual passenger. Almost a century ago, it was held that while a train conductor has the "undoubted right" to eject an intoxicated passenger, he must nonetheless select a safe place to put him off, so as not to "expose him to great peril."[1] Considerations to be reasonably taken into account included climatic conditions, the proximity of shelter, and, if known to the carrier, the passenger's health condition and state of mind.

Likewise, physicians must consider the risks that discharge would pose not only to the patients themselves but also to innocent third parties. With psychiatric patients, while it is impossible to accurately predict their future actions, physicians must competently assess patients and exercise due care in release determinations.

The recent case of *Pereira v. State*[2] illustrates the applicable standard. There, a mental patient was involuntarily committed to a state hospital and was subsequently diagnosed as suffering from paranoia and delusions. Following a stay of less than two months, and despite continuing symptoms, his attending psychiatrist authorized his release. Several months later, the patient entered a convenience store and exhibited bizarre behavior, speaking and cursing to himself. When a policeman arrived on the scene, the patient drew a gun and fatally shot the officer.

The widow filed suit against the state contending that the state hospital had negligently released a dangerous individual. The jury agreed, and a verdict was returned for the plaintiff. An intermediate appellate court reversed, contending that no duty was owed to potential victims in the absence of unambiguous threats against specific individuals. On further appeal, the Colorado Supreme Court disagreed and reversed the prior ruling, holding that threats against specific individuals are not necessary to create the duty. Rather, since the state hospital and its psychiatrists had custody of the patient, a special relationship existed between them and the potential victims, and if they knew or should have known that the patient presented a risk to others, then the patient should not have been released.

The issue of liability for patient release, however, is not confined to psychiatric practice. In a recent federal case involving the Veterans Administration, the plaintiffs attempted to show that physicians negligently discharged a patient and thereby caused a serious motor vehicle accident.[3] There, the plaintiffs were driving their car on a two-lane highway when they encountered another car driven by a patient released several hours earlier from a Veterans Administration hospital. According to the plaintiffs, the other vehicle swerved erratically from one side of the road to the other. The plaintiffs were severely injured in a head-on collision, and the driver of the other vehicle sustained even more severe injuries, dying a month later. The plaintiffs brought suit, alleging that the Veterans Administration hospital was negligent in releasing the patient under the circumstances. Specifically, they alleged that the combination of drugs given to the patient, consisting of Digoxin and Lasix, caused drowsiness. Secondly, they alleged that the patient's blood glucose level on the morning of discharge had been so high it could have caused a loss of consciousness. Finally, the plaintiffs maintained that the patient had suffered from Pickwickian syndrome, causing him to experience breathing stoppages during sleep and a tendency to doze off during the day.

At trial, the plaintiffs' own expert testified that the combination of Digoxin and Lasix was appropriate. Furthermore, the patient's glucose was said to be somewhat high, but according to expert testimony it was not at a dangerous level. Experts also agreed that no positive proof of Pickwickian syndrome existed.

The court further reasoned that, even if one assumed the patient's release had in fact been the cause of the accident, the real question was whether the Veterans Administration owed a duty to the plaintiffs and whether it breached that duty by releasing the patient. Reasonable care, of course, must be exercised when hospital authorities discharge patients with an immediate potential for causing harm to fellow travelers. In this case, the evidence was clear that the physicians had advised the patient not to drive himself home, at which time the patient advised them that his family would transport him. All evidence indicated that at the time of discharge the patient was aware and alert. Although he did in fact drive himself, whether or not he fell asleep remained unproven.

In the final analysis, the court found no medical evidence to prove that the patient had been potentially dangerous at the time of his release. Moreover, even if there had been such evidence, the court found that the degree of care exercised by the Veterans Administration staff had been reasonable; no duty had been breached. Accordingly, the court dismissed the plaintiffs' claims with prejudice.

Similar issues can arise with respect to patient release in an office setting. In the case of *Myers v. Queensberry*,[4] office examination of a diabetic obstetrical patient disclosed loss of fetal tones and decrease in the size of the uterus. The patient was immediately referred to a hospital for preliminary laboratory tests. She left her obstetrician's office, operating her own car, and subsequently lost control of the motor vehicle, striking a pedestrian. The plaintiff alleged that her obstetrician was negligent in allowing her to leave his office in an uncontrolled diabetic condition complicated by a missed abortion.

Initially, the plaintiff's suit was dismissed for failure to state a cause of action. On appeal, this dismissal was reversed with the court finding that such a factual situation, indeed, presented a genuine issue for trial as to whether the patient's condition necessitated a warning from her physician.

Ultimately, the wide variety of clinical situations facing practitioners, including those involving varying degrees of incapacitation due to diverse medical conditions as well as substance abuse, allows for no simple criteria in making discharge determinations. While the law does not demand that practitioners predict future patient actions, it does demand that practitioners make reasonable determinations based on a review of the patient's condition, with a view toward protecting not only the patient, but also innocent third parties when it is reasonably foreseeable that patient actions might threaten them.

REFERENCES

1. *Haug v. Great N. Ry. Co.*, 8 N.D.23, 27, 77N.W. 97, 99 (1898).

2. 768 P.2d 1198 (Colo. 1989).

3. *Wills v. United States*, 666 F.Supp. 892(W.D.La. 1987).

4. *Myers v. Queensberry*, 193 Cal. Rptr. 733, 144 Cal. App. 3d 888 (1983).